

Honorable Jamal N. Whitehead

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

VALVE CORPORATION,) Case No.: 2:23-cv-01016
Plaintiff,)
v.)
LEIGH ROTHSCHILD, ROTHSCHILD)
BROADCAST DISTRIBUTION) Noted on Motion Calendar:
SYSTEMS, LLC, DISPLAY) June 3, 2025
TECHNOLOGIES, LLC, PATENT ASSET)
MANAGEMENT, LLC, MEYLER LEGAL)
PLLC, AND SAMUEL MEYLER)
Defendants.)

REPLY IN SUPPORT OF MOTION FOR LEAVE
TO WITHDRAW AS COUNSEL FOR DEFENDANTS
Case No. 2:23-cv-01016

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1 **I. INTRODUCTION**

2 None of Valve (Dkt. 90), the Meyler Defendants (Dkt. 89), or the Rothschild Defendants
 3 (Dkt. 92), in their responses to the Motion for Leave to Withdraw of Donald R. McPhail and Eric
 4 R. Chad's (collectively "Counsel"), both of Merchant & Gould P.C. (the "Firm"), provides a
 5 compelling justification for requiring Counsel and the Firm to indefinitely provide Defendants
 6 legal services without compensation. For the reasons stated in Counsel's Motion (Dkt. 81) and
 7 herein, Counsel respectfully requests that the Court grant this motion.

8 **II. THE CIRCUMSTANCES OF THIS CASE OVERCOME ANY
 9 "PRESUMPTION" AGAINST WITHDRAWAL**

10 Counsel addressed the purported "presumption" against withdrawal within 60 days of the
 11 close of discovery in its Motion, including distinguishing the *Kessler* and *Oxbo* cases cited by
 12 Valve. (Dkt. 81 at 6:22-7:21.) Counsel notes, however, that Valve did not address *Protigent,*
 13 *Inc. v. Gustafson-Feis*, No. 2:20-CV-01551-TL, 2022 WL 2479124 (W.D. Wash. July 6, 2022),
 14 in which the motion to withdraw was filed less than six months before the start of trial and within
 15 60 days of the close of discovery. *Id.* at *1-2.

16 **III. REQUIRING THE FIRM TO REPRESENT DEFENDANTS WITHOUT
 17 PAYMENT WILL RESULT IN AN UNREASONABLE FINANCIAL
 18 BURDEN ON THE FIRM**

19 WSBA RPC 1.16(b)(1) permits withdrawal where continuing representation "will result
 20 in an unreasonable financial burden on the lawyer[.]" Requiring that Counsel continue to
 21 represent Defendants, potentially through trial, would subject the Firm to a likely seven-figure
 22 loss in the form of uncompensated legal services. Valve's suggestion that this burden will be
 23 mitigated by its supposed offer to "not stand in the way" of Counsel's request "once fact
 24 discovery is complete *and replacement counsel is found*" both misstates Valve's initial offer
 25 and outs itself as the non-offer it truly is. First, Valve did not offer to consent to a motion to
 26 withdraw once fact discovery was completed and replacement counsel was found. Rather, it only

1 offered to reconsider its position. (Decl. of Donald R. McPhail (hereinafter “McPhail Decl.”) Ex.
 2 at 1.) Moreover, though Defendants have informed Counsel that they have begun to search for
 3 replacement counsel, Defendants are not incentivized to timely seek new counsel in the present
 4 circumstances. Though Defendants *may* be able to find replacement counsel, and though
 5 Defendant PAM *may* eventually obtain insurance proceeds, neither of these outcomes is
 6 guaranteed and the timeline on both outcomes is indefinite. The Firm should not be obligated to
 7 absorb a potential seven-figure loss on the mere possibility of these events.

8 Moreover, even requiring Counsel to continue representing Defendants through the close
 9 of fact discovery will subject the Firm to a potential loss of hundreds of thousands of dollars of
 10 uncompensated legal services in view of the number of depositions Valve has noticed that have
 11 yet to be taken. This alone represents an untenable financial burden that the Firm should not be
 12 required to absorb.

13 **IV. VALVE WILL NOT BE PREJUDICED BY THE FIRM’S WITHDRAWAL
 14 OR THE REQUESTED STAY**

15 Valve has not identified a single substantive ongoing harm it will suffer as a result of the
 16 Firm’s withdrawal or a stay of this litigation that is not hypothetical or the result of Valve’s own
 17 litigation tactics. The alleged harms Valve identifies in its opposition are: (1) the potential
 18 financial burden on Valve of relitigating discovery disputes;¹ (2) the “existential” threat that the
 19 Rothschild Defendants will accuse Valve of infringing further patents; and (3) the potential for
 20 evidence to be lost. None of these justifies requiring the Firm to provide millions of dollars of
 21 legal services for which the Firm is unlikely to be compensated.

22 Regarding the expense of relitigating discovery disputes, Valve disregards the fact that
 23 Defendants’ new counsel, once retained, will step into the Firm’s position and that the Firm will
 24

25 ¹ It is noteworthy that in the case Valve cites in support of this alleged prejudice, *Experience*
 26 *Hendrix, LLC v. Pitsicalis*, No. 2:18-cv-07429, 2020 WL 2748019 (C.D. Cal. Mar. 25, 2020),
 27 the Court granted the request to withdraw. *Id.* at *1. It did so despite the fact that, unlike in this
 case, there was an ongoing financial harm to the opposing party. *Id.*

1 be able to work with Defendants' new counsel to get them up to speed. Moreover, any additional
 2 expense Valve will incur as a result of Counsel's withdrawal pales in comparison to the
 3 significant discovery-related expenses Valve has imposed on all parties through its own pressure-
 4 based, scorched-earth litigation tactics. The financial stakes of this case are limited. Valve's
 5 Second Amended Complaint includes four counts. Two of these are for Declaratory Judgment
 6 (*id.* at ¶¶ 55-64); one is for breach of contract (*id.* at ¶¶ 65-77), regarding which Valve has
 7 articulated ***no damages theory*** (McPhail Decl. Ex. 3 at 6; McPhail Decl. Ex. 4 at Resp. to
 8 Interrog. No. 14.); and one is for violation of the RCW 19.86 and 19.350 (Dkt. 38 ¶¶ 78-90),
 9 regarding which Valve has articulated ***no damages theory*** (McPhail Decl. Ex. 3 at 6; McPhail
 10 Decl. Ex. 4 at Resp. to Interrog. No. 14.) and which has a damages limit of \$25,000.² For those
 11 \$25,000³ at stake, among other things, Valve has: (1) sent no fewer than 18 subpoenas to law
 12 firms that either presently represent or previously represented one or more Defendants; (2) served
 13 subpoenas on several former employees of one or more Defendants, some of whom served as
 14 general counsel for PAM; (3) expressed an intent to depose at least four individuals and has
 15 noticed four 30(b)(6) depositions, including indicating that it may seek to depose some of these
 16 individuals twice depending on the outcome of Valve's recently filed Motion to Compel
 17 (McPhail Decl. Ex. 5 at 1); and (4) served a total of 366 document requests, 87 interrogatories,
 18 and 109 requests for admission. Having greatly increased the costs of this litigation through its
 19 ignorance of any sense of proportionality, Valve bemoaning the relatively small financial burden
 20 of working with new counsel strains credulity.

21 Regarding the alleged threat of future patent enforcement efforts by the Rothschild
 22 Defendants and Valve's concerns regarding the loss of evidence, these concerns are minor in
 23

24 ² See RCW 19.86.093 ("The district court may, in its discretion, increase the award of damages
 25 to an amount not more than three times the actual damages sustained, but such increased
 26 damage award shall not exceed twenty-five thousand dollars.")

27 ³ Valve also seeks payment of its attorneys' fees. Insofar as that is included in the "amount in
 28 controversy" in this litigation, *see* Fed. R. Civ. P. 26(b)(1), those fees have been increased by
 Valve's vexatious litigation tactics discussed herein to a much greater extent than any minimal
 increase that might result from Counsel's withdrawal.

1 view of the temporary nature of the stay Counsel seeks for Defendants to find new counsel, even
 2 if Mr. Meyler's request that any stay be at least 90 days (Dkt. 89 at 6-7) is granted. Valve will
 3 not long suffer under the purported threat of further enforcement actions from the Rothschild
 4 Defendants. Moreover, Valve has not identified any sources of evidence that it believes will
 5 actually be impacted by a temporary stay of a few months, which will not result in meaningful
 6 erosion of memories or destruction of documents.

7 This is not a case where there is an ongoing substantive harm against Valve that a short
 8 delay will exacerbate. Valve has identified no continuing impact Defendant's alleged
 9 wrongdoing has had on Valve's business. It has not done so because there is no such impact.
 10 Valve will not be prejudiced by Counsel's withdrawal and a brief stay.

11 **V. WITHDRAWAL WILL NOT HARM THE ADMINISTRATION OF 12 JUSTICE**

13 As explained in Counsel's Motion, Counsel provided Defendants with adequate notice
 14 that Counsel would need to move to withdraw if Defendants would not pay Counsel's fees and
 15 that the non-individual Defendants were required to have counsel under the local rules. This
 16 should not present a significant challenge to Defendants. Defendants Leigh Rothschild;
 17 Rothschild Broadcast Distribution Systems, LLC; Display Technologies, LLC; and PAM (the
 18 "Rothschild Defendants") are sophisticated consumers of legal services who are represented by
 19 several law firms versed in complex patent infringement litigation, and the Meyler Defendants
 20 are a law firm and an attorney. PAM's COO, Daniel Falcucci, is himself an attorney who filed a
 21 complaint for patent infringement on behalf of a Rothschild entity as recently as March of this
 22 year. (McPhail Decl. Ex. 6.) Though the Firm prides itself on the quality of services it provides,
 23 it is not the exclusive provider of quality complex litigation services. Insofar as Defendants'
 24 search for replacement counsel is negatively impacted because Defendants hope to obtain
 25 counsel who will indefinitely defer payment of fees unless and until Defendant PAM receives
 26 proceeds from an insurer with which PAM is engaged in ongoing litigation, Counsel respectfully

1 submits that is a result of Defendants' making and is not true prejudice. If an inability to retain
 2 new counsel due to unwillingness or inability to pay was sufficient to defeat a motion to
 3 withdraw, no withdrawal based on the non-payment of fees would ever be granted.

4 Regarding the proposition that the Firm agreed to represent Defendants without payment
 5 indefinitely as suggested by the Declaration of Leigh Rothschild (Dkt. 92), no such arrangement
 6 was in place. (McPhail Decl. ¶¶ 5, 7-15.) Though the Firm, through Mr. McPhail, offered some
 7 temporary flexibility while PAM attempted to resolve its coverage dispute with its insurer, such
 8 flexibility was not indefinite, and Mr. McPhail certainly never agreed to a contingent
 9 representation, which would make no sense in the context of representing a defendant. (*Id.* at
 10 ¶¶ 5, 10-12.) When it became clear PAM's dispute with its insurer would become protracted, the
 11 Firm requested payment of previously incurred attorneys' fees. (*Id.* at ¶ 14.) The Firm even
 12 offered to continue its representing Defendants in this litigation if Defendants committed to
 13 merely pay attorneys' fees and costs incurred going forward with the Firm reserving the right to
 14 seek payment of previously incurred fees at a future date. (*Id.* at ¶ 15.) Defendants indicated they
 15 would not agree to such an arrangement, and the Firm promptly filed the present motion. (*Id.*)

16 **VI. THE FIRM SHOULD NOT BE REQUIRED TO REPRESENT THE 17 MEYLER DEFENDANTS FOR FREE**

18 Regarding the Meyler Defendants, Counsel's understanding with Defendants was that the
 19 Rothschild Defendants would pay all legal fees for all Defendants. (Dkt. 82 ¶ 3.) It appears that
 20 Mr. Meyler had the same understanding. (Dkt. 89-1 ¶¶ 6-7.) As Mr. Meyler acknowledges,
 21 neither he nor Meyler Legal, PLLC, had an agreement with the Firm that obligates the Meyler
 22 Defendants or the Firm to each other in any way. It does not follow from these facts that Counsel
 23 should be required to continue representing the Meyler Defendants without compensation. The
 24 Meyler Defendants have never offered to compensate Counsel or the Firm for ongoing
 25 representation.

26 **VII. MR. CUNANAN HAS NOT MOVED TO WITHDRAW**

When a party is represented by multiple attorneys and withdrawal will not leave the client without representation, leave of the Court is not required to withdraw. LCR 83.2(c)(3). Matthew Cunanan, who has served as Defendants' local counsel, also represents Defendants. (Dkt. 19). At the time Counsel filed its Motion, it understood that Mr. Cunanan would also be moving to withdraw, which is why Counsel has sought leave from the Court rather than withdrawing without leave under LCR 83.2(c)(3). Mr. Cunanan has not so moved, making his present intentions unknown to the Firm. If Mr. Cunanan intends to stay on as counsel for Defendants, then the Firm respectfully submits that withdrawal under LCR 83.2(c)(3) is proper.

VIII. REQUEST FOR IN CAMERA REVIEW

In the interests of preserving client confidences and respecting the attorney-client privilege, Counsel has not attached to its Motion or this Reply communications and documents relating to relationship between Defendants, Counsel, and the Firm vis-à-vis Counsel's fees and costs and Defendants' payment obligations. If the Court believes review of these materials would be helpful, Counsel can provide them for in camera review.

IX. CONCLUSION

For the reasons stated herein and in Counsel's Motion (Dkt. 81), good cause exists to grant Counsel's Motion to Withdraw. The Court should grant Counsel's Motion and also enter a temporary stay for Defendants to find new counsel.

1 **CERTIFICATE OF COMPLIANCE**

2 I certify that this Reply contains 2,017 words in compliance with the Local Civil Rules
3 of the United States District Court for the Western District of Washington.

1
2 Dated: June 2, 2025
3

Respectfully submitted,

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